

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Proposing rule making related to subacute mental health care facilities and providing an opportunity for public comment

The Inspections and Appeals Department hereby proposes to amend Chapter 71, “Subacute Mental Health Care Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 135G.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 135G and 2018 Iowa Acts, House File 2456.

Purpose and Summary

Iowa Code chapter 135G regarding subacute mental health care facilities provides for the establishment of basic standards for the operation of these facilities to ensure the safe and adequate diagnosis, evaluation and treatment of persons with serious and persistent mental illness so that these persons are able to experience recovery and live successfully in the community. Since the adoption of the rules implementing Iowa Code chapter 135G, the Department has received questions from subacute mental health care facility licensees seeking clarification of certain rules. The proposed amendments add definitions, require documentation of background checks for personnel, clarify the time within which a treatment plan must be developed, provide further direction regarding the use of a seclusion room or restraints, clarify provisions related to medication management, add requirements related to nutrition and food preparation, and add requirements related to buildings, furnishings and equipment.

In addition, the amendments implement the changes made to Iowa Code chapter 135G resulting from 2018 Iowa Acts, House File 2456, which eliminated certain requirements for licensure by the Department, including the limit on the number of publicly funded subacute care facility beds licensed under Iowa Code chapter 135G.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on April 2, 2019. Comments should be directed to:

Deborah Svec-Carstens
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083
Email: deborah.svec-carstens@dia.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following new definitions of “Psychiatric care,” “Recovery” and “Recovery principles” in rule **481—71.2(135G)**:

“*Psychiatric care*” means the provision of care to patients in a psychiatric unit of an acute care hospital; a freestanding psychiatric hospital; or a mental health clinic.

“*Recovery*” means a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

“*Recovery principles*” means the ten guiding principles of recovery outlined by the federal Substance Abuse and Mental Health Services Administration (www.samhsa.gov): hope, person-driven, many pathways, holistic, peer support, relational, culture, addresses trauma, strengths/responsibility, and respect.

ITEM 2. Amend paragraph **71.3(1)“e”** as follows:

e. Show evidence of a certificate signed by the state fire marshal or deputy state fire marshal, or the designee of either, certifying compliance with fire safety rules.

ITEM 3. Amend paragraph **71.3(3)“c”** as follows:

c. Have an approved, current certificate signed by the state fire marshal or deputy state fire marshal, or the designee of either, certifying compliance with fire safety rules and regulations; and

ITEM 4. Rescind subrules **71.3(5)** and **71.3(6)**.

ITEM 5. Renumber subrule **71.3(7)** as **71.3(5)**.

ITEM 6. Amend paragraph **71.8(3)“e”** as follows:

e. When a defect or failure occurs in the fire sprinkler system for more than 10 hours or fire alarm system for more than 4 hours in a 24-hour period. (This reporting requirement is in addition to the requirement to notify the state fire marshal or the state fire marshal’s designee.)

ITEM 7. Amend paragraph **71.10(2)“a”** as follows:

a. Be a mental health professional, as defined in Iowa Code section ~~228.1(6)~~ 228.1(7), with at least one year of experience in an administrative capacity; or

ITEM 8. Amend paragraph **71.12(2)“c”** as follows:

c. A mental health professional as defined in Iowa Code section ~~228.1(6)~~ 228.1(7);

ITEM 9. Amend paragraph **71.12(2)“d”** as follows:

d. Direct care staff with at least ~~three years~~ one year of experience in a mental health care setting; and

ITEM 10. Amend paragraph **71.12(3)“c”** as follows:

c. Personnel records which are current, accurate, complete, and confidential to the extent allowed by law.

(1) The record shall contain documentation of how the employee’s or consultant’s education and experience are relevant to the position for which the employee or consultant was hired.

(2) The record shall contain documentation of criminal history, child abuse and dependent adult abuse record checks, which shall be conducted prior to employment.

ITEM 11. Amend subrule 71.12(4), introductory paragraph, as follows:

71.12(4) The facility shall require regular health examinations for all personnel. Employees shall have a health examination within 12 months prior to beginning employment and regular examinations thereafter at least every four years. The examination shall include, at a minimum, the health status of the employee, including screening and testing for tuberculosis as described in 481—Chapter 59.

ITEM 12. Amend paragraph **71.12(5)“b”** as follows:

b. The record shall include the employee’s:

- (1) Name and address,
- (2) Social security number,
- (3) Date of birth,
- (4) Date of employment,
- (5) References,
- (6) Position in the facility,
- (7) Job description,
- (8) Documentation of experience and education,
- (9) Criminal history, child abuse and dependent adult abuse background checks,
- ~~(9)~~ (10) Staff development plan training records,
- ~~(10)~~ (11) Annual performance evaluation,
- ~~(11)~~ (12) Documentation of disciplinary action,
- ~~(12)~~ (13) Date and reason for discharge or resignation,
- ~~(13)~~ (14) Current physical examination.

ITEM 13. Adopt the following new subrule 71.12(6):

71.12(6) Orders for medications and treatments shall be correctly implemented by qualified personnel.

ITEM 14. Amend paragraph **71.13(2)“a”** as follows:

a. Eligibility for individualized subacute mental health services will be determined by the standardized preadmission screening utilized by the facility, ~~which~~. The screening shall be conducted by a mental health professional, as defined in Iowa Code section 228.1(6) 228.1(7), a physician, a physician assistant, or an advanced registered nurse practitioner.

ITEM 15. Amend paragraph **71.13(7)“c”** as follows:

c. The facility shall make advance notification to the receiving facility prior to the transfer of any resident if the resident is to be transferred to another facility.

(1) Notification shall be made no less than 24 hours prior to transfer unless paragraph 71.13(6) “d” applies.

(2) Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being transferred.

ITEM 16. Amend paragraph **71.13(7)“d”** as follows:

d. The appropriate record as set forth in subrule ~~71.18(1)~~ 71.20(1) shall accompany the resident when the resident is transferred or discharged.

ITEM 17. Amend subrule 71.14(1) as follows:

71.14(1) A treatment plan must be developed with each resident. The plan must be based on initial and ongoing assessment of need, be designed to resolve the acute or crisis mental health symptoms or the imminent risk of acute or crisis mental health symptoms, and be completed within six hours of admission, or no later than 12 noon following admission if the resident is admitted between 8 p.m. and 6 a.m.

ITEM 18. Amend rule 481—71.16(135G) as follows:

481—71.16(135G) Seclusion and restraint.

71.16(1) *Use of a seclusion room.* Pursuant to Iowa Code section 135G.3(2), a ~~subacute care facility utilizing a seclusion room used by a subacute care facility~~ must meet the conditions of 42 CFR § 483.364(b). ~~Use of the seclusion room shall be approved by a licensed psychiatrist or by order of the resident's physician, a physician assistant, or an advanced registered nurse practitioner.~~

a. A subacute care facility utilizing a seclusion room shall have written policies regarding its use. The policy shall:

(1) Specify the types of behavior that may result in seclusion room placement.
(2) Delineate the licensed personnel who may authorize use of the seclusion room.
(3) Require documentation of the time in the seclusion room, the reasons for use of the seclusion room, and the reasons for any extension of time beyond one hour. Under no circumstances shall the use of the seclusion room exceed four hours.

(4) Require notice to residents of the types of behavior that may result in seclusion room placement.

b. A staff member shall always be in hearing distance of the seclusion room, and the resident shall be visually checked by the staff at least every 15 minutes. Every check shall be documented in writing.

c. A seclusion room shall not be used for punishment, for the convenience of staff, or as a substitution for supervision. A seclusion room shall only be used when a less restrictive alternative has failed and:

(1) In an emergency to prevent injury to the resident or to others; or
(2) For crisis intervention.

71.16(2) *Use of restraints.* There shall be written policies that define the use of restraint, designate the staff member who may authorize its use, and establish a mechanism for monitoring and controlling its use.

71.16(3) *a.* Restraint shall not be used for punishment, for the convenience of staff, or as a substitution for supervision. Restraint shall only be used:

~~a.~~ (1) In an emergency to prevent injury to the resident or to others; or
~~b.~~ (2) For crisis intervention.

71.16(4) *b.* Restraint must not result in harm or injury to the resident and must be used only to ensure the safety of the resident or others during an emergency situation until the emergency situation has ceased, even if the restraint order has not expired.

71.16(5) *c.* The use of restraint should be selected only when other less restrictive measures have been found to be ineffective to protect the resident or others. The staff shall demonstrate effective treatment approaches and alternatives to the use of restraint.

71.16(6) ~~Standing or as-needed orders for restraint are prohibited.~~

71.16(7) *d.* Under no circumstances shall a resident be allowed to actively or passively assist in the restraint of another resident.

71.16(8) *e.* Staff trained in the use of emergency safety interventions must be physically present and continually assessing and monitoring the well-being of the resident and the safe use of restraint throughout the duration of the emergency situation.

71.16(9) **71.16(3)** *Orders for restraint or seclusion.* An order for restraint or seclusion shall not be written as a standing order or on an as-needed basis.

a. Each order for restraint or seclusion shall include:

(1) The name of the ordering physician, physician assistant or advanced registered nurse practitioner.

(2) The date and time the order is obtained.

(3) The emergency safety intervention ordered, including the length of time for which restraint or seclusion is authorized.

b. Orders for restraint or seclusion must be by a physician or other licensed practitioner permitted by law to order restraint or seclusion, physician assistant or advanced nurse practitioner.

~~a.~~ (1) Verbal orders must be received while the emergency safety intervention is being initiated by staff or immediately after the emergency safety situation ends and must be verified in writing in the resident's record by the physician or other licensed practitioner permitted by law to order restraint or seclusion, physician assistant or advanced registered nurse practitioner.

~~b.~~ (2) Once the one-time order for the specific resident in an emergency safety situation has expired, it may not be renewed on a planned, anticipated, or as-needed basis.

71.16(4) *Simultaneous use prohibited.* Restraint and seclusion shall not be used simultaneously.

~~71.16(10)~~ **71.16(5)** *Documentation of use of restraint or seclusion.* Staff must document in the resident's record and in a centralized tracking system any use of restraint or seclusion.

a. Documentation must be completed by the end of the shift in which the intervention occurs or during the shift in which it ends.

b. Documentation shall include:

(1) The order for restraint or seclusion.

(2) The time the emergency safety intervention began and ended.

(3) The emergency safety situation that required restraint or seclusion.

(4) The name of staff involved in the emergency safety intervention.

(5) The interventions used and their outcomes.

(6) The signature of the physician, physician assistant or advanced nurse practitioner.

~~71.16(11)~~ **71.16(6)** *Meeting to process restraint or seclusion.* As soon as reasonably possible after the restraint or seclusion of a resident has terminated, staff must meet to process the restraint or seclusion occurrence and document in writing the meeting.

71.16(12) **71.16(7)** *Multiple occasions of restraint or seclusion.* A resident who requires restraint or seclusion on multiple occasions should be considered for a higher level of care.

~~71.16(13)~~ **71.16(8)** *Staff training.* The facility shall provide to the staff training by qualified professionals on physical restraint and seclusion theory and techniques.

a. The facility shall keep a record of the training, including attendance, for review by the department.

b. Only staff who have documented training in physical restraint and seclusion theory and techniques shall be authorized to assist with the seclusion or physical restraint of a resident.

ITEM 19. Amend subrule 71.17(1) as follows:

71.17(1) Medications must be ordered by qualified prescribers and administered by qualified personnel. For purposes of this subrule, "qualified personnel" means, at a minimum, a certified medication aide.

ITEM 20. Amend subrule 71.17(7) as follows:

71.17(7) Whenever a resident brings the resident's own prescribed medications into the facility, such medications must not be administered unless identified by a qualified prescriber or pharmacist and ordered by a qualified prescriber. If such medications cannot be administered, they must be packaged, sealed, and returned to an adult member of the resident's immediate family or the legal guardian or securely stored and returned to the resident upon discharge. However, if previously prescribed medication would prove harmful to the resident, the medication may be withheld from the resident and disposed of in accordance with subrule 71.17(6). There must be documentation by the qualified prescriber in the resident's clinical record citing the dangers or contraindications of the medication being withheld.

ITEM 21. Renumber rules **481—71.18(135G)** to **481—71.20(135G)** as **481—71.20(135G)** to **481—71.22(135G)**.

ITEM 22. Adopt the following new rule 481—71.18(135G):

481—71.18(135G) Dietary.

71.18(1) Nutrition and menu planning.

- a. Menus shall be planned and followed to meet the nutritional needs of residents.
- b. Menus shall be planned and served to include foods and amounts necessary to meet federal dietary guidelines.
- c. At least three meals or their equivalent shall be served daily, at regular hours.

71.18(2) Dietary storage, food preparation, and service. All food shall be handled, prepared, served and stored in compliance with the Food Code adopted pursuant to Iowa Code section 137F.2.

ITEM 23. Adopt the following new rule 481—71.19(135G):

481—71.19(135G) Buildings, furnishings, and equipment.

71.19(1) Buildings—general requirements.

- a. All windows shall be supplied with window treatments that are kept clean and in good repair.
- b. Whenever glass sliding doors or transparent panels are used, they shall be marked conspicuously.
- c. The facility shall meet the equivalent requirements of the appropriate group occupancy of the state fire code.

71.19(2) Furnishings and equipment.

- a. All furnishings and equipment shall be durable, cleanable, and appropriate to their function.
- b. Upholstery materials shall be moisture- and soil-resistant as needed, except on furniture provided by the resident and the property of the resident.

71.19(3) Dining area and common area. Every facility shall have a dining area and a common area easily accessible to all residents.

- a. A common area shall be maintained for the use of residents and their visitors and may be used for recreational activities. Common areas shall be suitably furnished.
- b. Dining areas shall be furnished with dining tables and chairs appropriate to the size and function of the facility. Dining areas and furnishings shall be kept clean and sanitary.

71.19(4) Bedrooms.

- a. Each resident shall be provided with a standard, single, or twin bed, substantially constructed and in good repair. Rollaway beds, metal cots, or folding beds are not acceptable.
- b. Each bed shall be equipped with the following: casters or glides; clean springs in good repair; a clean, comfortable, well-constructed mattress approximately five inches thick and standard in size for the bed; and clean, comfortable pillows of average bed size.
- c. Each resident shall have a bedside table with a drawer to accommodate personal possessions.
- d. There shall be a comfortable chair, either a rocking chair or armchair, per resident bed. The resident's personal wishes shall be considered.
- e. There shall be drawer space for each resident's clothing. In a bedroom in which more than one resident resides, drawer space shall be assigned to each resident.
- f. Beds and other furnishings shall not obstruct free passage to and through doorways.
- g. Beds shall not be placed in such a manner that the side of the bed is against the radiator or in close proximity to it unless the radiator is covered so as to protect the resident from contact with it or from excessive heat.
- h. There shall be no more than two residents per room.

71.19(5) Bath and toilet facilities.

- a. There shall be a minimum of one toilet and one sink for each four residents and one shower for each eight residents. For example, a facility with the maximum of 16 beds shall have four toilets and sinks and two showers.

- b. All sinks shall have paper towel dispensers and an available supply of soap.
- c. Toilet paper shall be readily available to residents.

71.19(6) Heating. A centralized heating system shall be maintained in good working order and capable of maintaining a comfortable temperature for residents of the facility. Portable units or space heaters are prohibited from being used in the facility except in an emergency.

71.19(7) Water supply.

- a. Private sources of water supply shall be tested annually and the report made available for review by the department upon request.
- b. A bacterially unsafe source of water supply shall be grounds for denial, suspension, or revocation of license.
- c. The department may require testing of private sources of water supply at its discretion in addition to the annual test. The facility shall supply reports of such tests as directed by the department.
- d. Hot and cold running water under pressure shall be available in the facility.
- e. Prior to construction of a new facility or new water source, private sources of water supply shall be surveyed and shall comply with the requirements of the department.

ITEM 24. Amend renumbered subrule 71.22(1) as follows:

71.22(1) Emergency care. Each facility shall have written policies and procedures for emergency medical and psychiatric ~~care~~ treatment, which shall include immediate notification by the person in charge to the physician, physician assistant, advanced registered nurse practitioner or mental health professional of any accident, injury or adverse change in the resident's condition. "Immediate" for purposes of this subrule means within 24 hours.

ITEM 25. Amend renumbered subrule 71.22(4) as follows:

71.22(4) Safe environment. The licensee of a subacute care facility is responsible for the provision and maintenance of a safe environment for residents and personnel. The subacute care facility shall meet the fire and safety rules as promulgated by the state fire marshal or the state fire marshal's designee.